

**Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; the Special Rapporteur on the right to privacy; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Working Group on discrimination against women and girls**

Ref.: OL ISR 6/2022  
(Please use this reference in your reply)

5 May 2022

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues; Special Rapporteur on the right to privacy; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 49/10, 42/22, 46/9, 43/4, 41/12, 43/16, 43/8, 46/16, 1993/2A, 43/36 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **Counter-Terrorism Law 5776-2016 and related regulations and orders**. We are concerned that the present legal and regulatory framework for designating terrorist organizations lacks precision in key respects, infringes on critically important rights, and may not meet the required thresholds of legality, necessity, proportionality, and non-discrimination under international law. We are particularly concerned that the law may result in the unlawful infringement of, among others, the fundamental rights to freedom of peaceful assembly and association and freedom of opinion and expression, as well as fair trial rights and core social, economic, and cultural rights, including the rights to property, work, and participation in cultural life. These rights are protected under the Universal Declaration of Human Rights, as well as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to which Your Excellency's Government is a party and apply equally in the context of the Occupied Palestinian Territory (see E/C.12/ISR/CO/4, para. 9).

We respectfully underline the importance of maintaining and upholding the fundamental guarantees of international humanitarian and human rights law particularly with respect to counter-terrorism efforts (see A/74/337). We stress that respect for international human rights law treaties and norms is a complementary and mutually reinforcing objective to the advancing of security as confirmed by the

Universal Declaration on Human Rights. Consequently, we recommend review and reconsideration of certain aspects of the existing legislative and regulatory framework to ensure compliance with Israel's international and regional legal obligations. We note that best international practice encourages States to independently review counter-terrorism and emergency laws regularly to ensure necessity and compliance with international law.

We have previously expressed our concerns on the human rights challenges of designation of civil society organizations as terrorist entities under Counter-Terrorism Law 5776-2016 through press releases on 25 October 2021<sup>1</sup> and 25 April 2022<sup>2</sup>. We have also expressed our concerns through various letters dated 26 January 2022<sup>3</sup> and 8 December 2021<sup>4</sup>. These letters are available through the website of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

## **Contents and Context of the Law and Regulations**

### *2016 Counter-Terrorism Law*

#### (i) Definitional Framework

We understand that the Israeli parliament adopted the Counter-Terrorism Law 5776-2016 (the "CT Law") on June 15, 2016.<sup>5</sup> The CT Law entered into force in November 2016. The stated purpose of the CT Law pursuant to Chapter One, Section 1 is:

to establish criminal and administrative legal provisions, including special enforcement powers, for the purpose of combatting terrorism, including for – (1) Preventing the establishment, existence and activity of terrorist organizations; (2) Preventing and foiling terrorist offenses carried out by terrorist organization or individuals – all while taking into account the characteristics of the terrorist organizations and the terrorist offenses; the anticipated danger they pose to the security of the State of Israel, its residents and its governmental order; and the State of Israel's commitment to combatting terrorism in the spirit of the international conventions to which it is party – balanced alongside the State of Israel's commitment to human rights and the accepted standards in this field as provided by international law.<sup>6</sup>

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<sup>1</sup> <https://www.ohchr.org/en/press-releases/2021/10/un-experts-condemn-israels-designation-palestinian-human-rights-defenders>

<sup>2</sup> <https://www.ohchr.org/en/press-releases/2022/04/israelpalestine-un-experts-call-governments-resume-funding-six-palestinian>

<sup>3</sup> <https://www.ohchr.org/sites/default/files/2022-02/UN-experts-letter-regarding-the-decision-of-the-Government-of-the-Netherlands-to-end-funding-for-the-UAWC.pdf>

<sup>4</sup> <https://www.ohchr.org/sites/default/files/2022-01/LetterHRJosepBorrell.8.12.2021.pdf>

<sup>5</sup> Available at [https://www.gov.il/he/departments/ministry\\_of\\_justice/govil-landing-page](https://www.gov.il/he/departments/ministry_of_justice/govil-landing-page). This communication relies on an unofficial English translation of the law.

<sup>6</sup> Counter-Terrorism Law, Chapter One, sec. 1.

Chapter One, Section 2 of the CT Law defines a “terrorist act” as “an act that constitutes an offense, or a threat to carry out such an act” and meets the following criteria:

- (1) It was carried out with a political, religious, nationalistic or ideological motive;
- (2) It was carried out with the intention of provoking fear or panic among the public or with the intention of compelling a government or other governmental authority, including a government or other governmental authority of a foreign country, or a public international organization, to do or to abstain from doing any act;
- (3) The act carried out or threatened to be carried out, involved one of the following, or posed an actual risk of one of the following:
  - a) Serious harm to a person’s body or freedom;
  - b) Serious harm to public health or safety;
  - c) Serious harm to property, when in the circumstances in which it was caused there was an actual possibility that it would cause the serious harm mentioned in sub-paragraphs (a) or (b) and that was carried out with the intention of causing such harm;
  - d) Serious harm to religious objects; here, “religious objects” means a place of worship or burial and holy objects; or
  - e) Serious harm to infrastructure, systems or essential services, or their severe disruption, or serious harm to the State's economy or the environment.

It is “immaterial whether a motive or objective enumerated in paragraphs (1) and (2) was the sole or principal motive or objective for the act or the threat.”

A “terrorist organization” is defined in the same section (ch. I, sec. 2) as any of the following:

- (1) A body of persons in an organized and continuous structure that commits terrorist acts or that operates with the intention that terrorist acts will be committed — including an aforementioned body of persons that is engaged in training or instruction for the commission of terrorist acts, or that carries out an act involving weapons or performs a weapons transaction, in order to carry out terrorist acts—whether or not it has been designated as a terrorist organization pursuant to Part B;
- (2) A body of persons in an organized and continuous structure that acts, directly or indirectly, to assist an organization mentioned in paragraph (1), or that acts with the intention of promoting the activity of such an organization, including by financing it – all of the foregoing, in a manner capable of making a substantial or ongoing contribution to the organization's activity, or [where such body of persons] has a substantial affiliation to [the organization], provided that the body of persons [defined in this paragraph] has been designated as a terrorist organization pursuant to Part B; [or]

(3) An organization that has been designated outside of Israel as a terrorist organization, provided it has been designated as such pursuant to Part B.

The provision clarifies that “[i]t is immaterial whether the organization's members are aware of the identity of the other members, whether the composition of the organization's members is fixed or changes, whether the organization also engages in legal activities or whether it also acts to further legal objects.”

In addition to membership in a designated “terrorist organization,” the CT Law criminalizes, among other preparatory or ancillary offenses, “provid[ing] a service or resources to a terrorist organization, where doing so may assist or promote the organization's activity” (sec. 23); “commit[ing] an act of identification with a terrorist organization, including by publishing words of praise, support or sympathy, waving a flag, displaying or publishing a symbol, or displaying, playing or publishing a slogan or anthem” in certain enumerated situations (sec. 24); and “provid[ing] a service or mak[ing] resources available to another . . . in circumstances in which doing so may facilitate, directly or indirectly, the commission of an offense that is a terrorist act” (sec. 25).

(ii) Designation and Revocation Procedures

Chapter Two of the CT Law provides for the process for designating a “terrorist organization” and “terrorist operative.” According to Section 3, the Minister of Defense may designate a “terrorist organization” once he is convinced that paragraph (1) or (2) of the [“terrorist organization”] definition applies, and that the organization “has a connection to Israel” (sec. 3(a)). The designation must be “based upon a reasoned written request from the Head of the Israel Security Agency, or from the head of another Defense (Security) Authority, submitted by the Head of the Israel Security Agency together with his opinion—[with either requests being] subject to the approval of the Attorney General.” The written request must “specify the information and facts on which he is basing his position” (sec. 3(b)). In “special cases,” the Prime Minister can act on his own initiative and “determine that a designation decision shall be made by the Ministerial Committee or by the Government” (sec. 3(d)). Notice prior to submission of the designation request is required “[w]ith regard to a terrorist organization according to paragraph (2) of the definition ‘terrorist organization’ that is acting in Israel through a party operating on its behalf,” so long as the Head of the Defense (Security) Authority “has determined that such a warning will not thwart the possibility of taking action against the organization” (sec. 3(c)). Otherwise notice of a designation or revocation order, including notice of temporary designations, are published on the Ministry of Defense’s website and potentially through additional avenues (sec. 18).

The CT Law stipulates temporary and permanent designation processes. Following the written request for designation, the Minister of Defense may first issue a temporary designation, which “shall be considered, for all intents and purposes, as a designation of a terrorist organization, unless stated otherwise” (sec. 4(e)). The temporary designation will remain in effect until the designation is revoked or a permanent designation enters into force (secs. 4(b), 6). The permanence of the designation depends on the initial response of the designated organization. After the temporary designation, the designated organization or a member thereof may submit written arguments that “specify all the facts upon which his arguments are based, and

[] attach the relevant documents in his possession” within two months of the order’s publication in the Official Government Gazette, subject to a potential extension by the Minister of Defense (sec. 5(a)–(d)). If the designated organization elects not to submit written arguments, the designation becomes permanent after one month following the submission period (sec. 6(a)). If the organization does submit written arguments, those claims—as well as a reply from the Head of the Defense (Security) Authority—are reviewed by an advisory committee comprising a former Supreme Court or District Court judge, a jurist qualified to serve as a District Court Judge, and an expert in security and counter-terrorism as appointed by the Minister of Justice (sec. 14). Within four months of the initial designation request, subject to extension on special grounds, the Advisory Committee must issue recommendations to the Minister of Defense regarding a permanent designation (sec. 5(e)). The Minister of Defense may then issue a permanent designation order within one month, or two months if “special reasons” permit (sec. 6(a)).

The Minister of Defense may revoke a permanent “terrorist organization” designation “upon [written] request . . . or by his own initiative,” if he is convinced that either “[t]here was no basis for the designation” or “[t]wo years [or less, subject to ‘special reasons’] have elapsed since the date of the designation mentioned in Section 6, the organization has substantially changed its ways, and there is a high probability that it will not resume engagement in terrorist activity” (sec. 7(a)). Organizations subject to a permanent designation may file a request for revocation with the Advisory Committee at any time (sec. 7(b)). The same Advisory Committee appeals process that applies to temporary designations applies to permanent designations, though the Minister may extend the one-month deadline for issuing the revocation decision to three months, should “special grounds” apply (sec. 7(d)). Further, the CT Law clarifies that the stipulated designation revocation proceeding available to designated organizations or entities is limiting: “the Court shall not consider a claim that a body of persons or person designated pursuant to this chapter is not a terrorist organization or terrorist operative, as the case may be, or a claim concerning the invalidity of a terrorist organization or a terrorist operative designation”—“notwithstanding the authority of the Supreme Court in its role as the High Court of Justice” (sec. 19).

### (iii) Confidential Information

Although the CT Law stipulates that the designation request, Advisory Committee’s recommendations, and Minister of Defense’s designation decision are to be made available to the applicant, “confidential information” as defined in Section 9(a) may be withheld:

The Advisory Committee may, at the request of the Head of a Defense (Security) Authority, determine that information that has been presented before it is confidential, provided the Committee is convinced that its disclosure is liable to harm State security, foreign relations, or public safety or security, or to reveal confidential work methods, and that the interest in its non-disclosure outweighs the necessity of its disclosure for the purpose of determining the truth and attaining justice (in this section – confidential information). To make such a determination, the Committee may inspect the information and receive explanations on the matter from the Head of the Defense (Security) Authority, even without the presence of the applicant or its

attorney.

If the Advisory Committee determines that the information is not confidential, the Head of the Defense (Security) Authority “may request that that information not be taken into account in providing the basis for the Committee's recommendation and the Minister of Defense's decision” and if so requested, “the Committee and the Minister shall not take the information into account and it shall not be sent to the applicant and its attorney” (sec. 9(d)). If the Advisory Committee determines that the information is confidential and bases its recommendation on such information, it must “notify the party submitting the claims or revocation application, as the case may be, of its intention to do so, and shall send the party or its attorney a summary of the confidential information prepared by the Head of the Defense (Security) Authority who requested that the information be confidential, insofar as it is possible to do so without harming the interest for which confidentiality was determined” (sec. 9(c)).

#### (iv) Sanctions and Penalties

With regard to stipulated penalties, the CT Law provides for the imprisonment of individuals convicted of participating in a designated terrorist organization, with sentences ranging from 5 years (for membership) to 25 years (for heading the organization), and life imprisonment in situations where the organization's offenses include murder (secs. 20–22). The CT Law also provides for, among other sentences, 5 years' imprisonment for anyone “who provides a service or resources to a terrorist organization, where doing so may assist or promote the organization's activity . . . unless he proves he was unaware that the organization is a terrorist organization” (sec. 23); and 2 to 5 years' imprisonment for demonstrating identification with the terrorist organization and incitement to terrorism (sec. 24). In addition, the CT Law stipulates aggravated penalties for offenses that are terrorist acts (secs. 37–38). For grave security offense detainees, Chapter Four of the CT Law provides for certain exceptions to Israel's Arrests Law, including time extensions for bringing the detainee before a judge and for detention.

In addition to prosecutions and imprisonment, the CT Law provides for, among other sanctions and penalties, the judicial and administrative confiscation of organizational assets. Section 56 grants the Minister of Defense the authority to issue administrative seizure orders, including for the temporary seizure of the “[p]roperty of a terrorist organization or a terrorist operative designated as such . . . if [the Minister of Defense] is convinced that this is necessary to thwart a terrorist organization's activity and harm its ability to promote its objectives.” The provision also permits the seizure of assets pending designation at the request of the Israel Security Agency, where there is a risk of forfeiture in the interim. In such cases, notice must be provided to the person claiming rights to the affected property “if he is known and it is possible to locate him and send him notice using reasonable diligence” (sec. 61). The affected person may present arguments challenging the order before the Minister of Defense or whoever authorized the seizure (sec. 61). In legal proceedings pertaining to asset seizures, “the Court may, at the request of the Attorney General's representative, deviate from the rules of evidence, if it is convinced, for reasons that shall be recorded, that doing so is necessary for determining the truth and attaining justice” (sec. 65). Confidential information is admissible at the request of the Attorney General's representative, in which case the Court “may order that a summary of the confidential evidence be sent to the other party or to its attorney, insofar as it is possible to do so without harming the interest for the sake of which the confidentiality

of the evidence was determined.”

The CT Law also stipulates that the District Commander of the Israel Police may issue a prevention of activity order where he has “reasonable grounds to suspect that terrorist organization activity, or activity intended to promote or support terrorist organization activity, including a meeting, procession, convention, assembly or training, is taking place or is due to take place” (sec. 69). “One who regards himself as having been harmed by a Prevention of Activity Order may submit his arguments on the matter to the District Commander; the District Commander may leave the Order as it is, revoke it or change its conditions” (sec. 69(c)).

#### *Defense (Emergency) Regulations of 1945*

We understand that the Defense (Emergency) Regulations were incorporated into Israeli law in 1948 and that some of these regulations remain in force today, subject to amendments.<sup>7</sup> We note that when ratifying the ICCPR in October 1991, the State of Israel made the following declaration:

[T]he State of Emergency which was proclaimed in May 1948 has remained in force ever since. This situation constitutes a public emergency within the meaning of article 4 (1) of the Covenant. The Government of Israel has therefore found it necessary, in accordance with the said article 4, to take measures to the extent strictly required by the exigencies of the situation, for the defence of the State and for the protection of life and property, including the exercise of powers of arrest and detention. In so far as any of these measures are inconsistent with article 9 of the Covenant, Israel thereby derogates from its obligations under that provision.

We express concern regarding the seemingly permanent nature of this state of emergency—now entering its 74<sup>th</sup> year. In this regard we echo the concerns of the Human Rights Committee at maintaining a state of emergency, including through the application of the Emergency Defense Regulations (see CCPR/C/ISR/CO/4, para. 10). As the Committee “recall[ed], with reference to its general comment No. 29 (2001) on states of emergency . . . measures derogating from the provisions of the Covenant must be of an exceptional and temporary nature and are limited to the extent strictly required.” We further reaffirm the finding of the Special Rapporteur on the promotion and protection of human rights while countering terrorism that “[p]ermanent and complex emergencies are deeply troubling for the protection of human rights” and “international law does not allow the permanent use of emergency powers that implicate indefinite imposition of larger restrictions or suspension of human rights and fundamental freedoms” (A/HRC/37/52, para. 57). We recognize as a positive development that a sub-committee was recently established and entrusted to bring about an end to the state of emergency.

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<sup>7</sup> It is our understanding that the Mandate government first enacted the Defense (Emergency) Regulations in 1945 and that Israel then incorporated the regulations into law in 1948. Although in 1951 the Knesset directed a committee to draft a bill for their repeal, elements of the Regulations remain in effect in Israeli law. Section 76(2) of the Counter-Terrorism Law repealed several Defense (Emergency) Regulations, but components still apply in the Occupied Palestinian Territory.

*Military Order No. 1651*

We understand that the Commander of the Israeli Defense Forces has issued more than 1,800 military orders since 1967. These military orders govern the lives of the Palestinians in the West Bank and regulate, among other offenses, terrorism, engagement in civil society activities, and membership in banned organizations (A/HRC/49/87, para. 45).<sup>8</sup> According to Israeli law, the military orders are applied in the West Bank and Gaza, while the Counter-Terrorism Law is applied in occupied East Jerusalem and Israel (A/HRC/49/87, n.7).

Military Order No. 1651, the Order Regarding Security Directives, was issued in 2009. The Order consolidated and revised several preceding orders, and places restrictions on designated “hostile organizations.”<sup>9</sup> A “hostile organization” is defined as “a person or any group of persons whose aim it is to harm public security, IDF forces or the public order in Israel or in a held region” (sec. 238) or an “unlawful association” as defined in the 1945 Defense (Emergency) Regulations (sec. 251). Regulation 84 of the Defense (Emergency) Regulations defines an “unlawful association” as “any body of persons, whether incorporated or unincorporated” that “by its constitution or propaganda or otherwise advocates, incites or encourages” any of the following “unlawful acts”:

- (i) the overthrow by force or violence of the constitution of Palestine or the Government of Palestine;
- (ii) the bringing into hatred or contempt of, or the exciting of disaffection against, His Majesty’s Government in the United Kingdom or the Government of Palestine or the High Commissioner in his official capacity;
- (iii) the destruction of or injury to property of His Majesty’s Government in the United Kingdom or of the Government of Palestine;
- (iv) acts of terrorism directed against servants of His Majesty’s Government in the United Kingdom or against the High Commissioner or against servants of the Government of Palestine; or which has committed or has claimed to have been responsible for, or to have been concerned in, any such acts as are mentioned in sub-paragraph (ii), (iii) or (iv) of this paragraph (art. 84(b)).

Although Section 76(2) of the Counter-Terrorism Law repealed Regulation 84, among other Defense (Emergency) Regulations, the Military Order maintains Regulation 84’s definitional framework for “unlawful associations.”

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<sup>8</sup> See the jurisprudence of the Working Group on Arbitrary Detention in respect of Military Order No. 1651, including opinions Nos. 8/2021, 60/2021 and 61/2021.

<sup>9</sup> This communication relies on an unofficial English translation of the order, available at [http://www.militarycourtwatch.org/files/server/military\\_order\\_1651.pdf](http://www.militarycourtwatch.org/files/server/military_order_1651.pdf).



Section 238 of Order No. 1651 prohibits any “contact with a person who can reasonably be assumed to be operating on behalf of a hostile organization or in its service, regardless of whether the contact is conducted with the hostile organization alone or with a body in which the hostile organization participates or takes part in its decisions.” Section 251 further penalizes any person who:

- (1) Attempts, orally or in another way, to influence public opinion in the region in a manner which may harm public peace or public order, or
- (2) Carries out any action or holds in his possession any object with the intention of executing or facilitating the execution of an attempt to influence public opinion in the region in a manner which may harm public peace or public order, or
- (3) Publishes words of praise, sympathy or support for a hostile organization, its actions or objectives, or
- (4) Carries out an action expressing identification with a hostile organization, with its actions or its objectives or sympathy for them, by flying a flag, displaying a symbol or slogan or playing an anthem or voicing a slogan, or any similar explicit action clearly expressing such identification or sympathy, and all in a public place or in a manner that persons in a public place are able to see or hear such expression of identification or sympathy.

Sections 238 and 251 stipulate that persons found to violate these provisions will be sentenced to ten years imprisonment. Article D of the Order further provides for the seizure and forfeiture of goods where individuals are respectively suspected or convicted of an offense.

### **Applicable International and Human Rights Law Standards**

#### *International Human Rights Law Obligations*

We respectfully refer your Excellency’s Government to the fundamental human rights enshrined in customary and treaty law, including pursuant to the Universal Declaration of Human Rights, as well as the ICCPR and ICESCR to which your Excellency’s Government is a party. We underscore the importance of fully implementing international human rights standards applicable under the ICCPR including ICCPR article 9, protecting against arbitrary arrest and detention, ICCPR article 14, guaranteeing the right to a fair trial, article 19, guaranteeing the right of everyone to freedom of opinion and expression; ICCPR articles 21 and 22, guaranteeing the rights of everyone to peaceful assembly and freedom of association; and ICCPR article 17, protecting against arbitrary or unlawful interference with a person’s privacy, reputation, and home.

We also respectfully call the attention of your Excellency’s Government to the rights stipulated under ICESCR, including article 6, which guarantees the right to work, article 15, which recognizes the right of everyone to “take part in cultural life” and protects the freedom indispensable for scientific research and creative activity and article 3, which ensures the equal right of women to enjoy these and other enumerated economic, social, and cultural rights. Article 7 of CEDAW articulates women’s right to equal participation in political and public life, including the right to participate in non-governmental organizations and associations concerned with the

public and political life of the country. Pursuant to article 2 of the ICCPR, ICESCR and CEDAW, Your Excellency's Government is under a duty to give domestic legal effect and to take deliberate, concrete, and targeted steps to respect and ensure the enjoyment of the Covenants' rights for all individuals within your territory and/or subject to their jurisdiction. While certain rights, including the rights to freedom of association and peaceful assembly, may be subject to derogation in times of public emergency, including for specific, empirically-based national security aims, such limitations must meet the objective criteria of proportionality, necessity, legality, and non-discrimination, as required under international law.

In addition, we refer to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders. The Declaration reaffirms each State's responsibility and duty to protect, promote, and implement all human rights and fundamental freedoms, including every person's right, individually and in association with others, "to form, join and participate in non-governmental organizations, associations or groups" and "to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means" (A/RES/53/144, arts. 5, 13).

#### *International Humanitarian Law Obligations*

It is our position that international human rights law and international humanitarian law apply concurrently in the entirety of the Occupied Palestinian Territory. In this regard, we reaffirm the Human Rights Committee's previous observation to your Excellency's Government that:

the applicability of [the State of Israel's] human rights obligations in the Occupied Palestinian Territory, as well as the concurrent application of international human rights law and international humanitarian law in a situation of armed conflict or occupation, have been affirmed by the International Court of Justice in its advisory opinion rendered on 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. This is also the view consistently adopted by various human rights treaty bodies, including the Committee, and expressed in the relevant resolutions of the General Assembly and in the reports of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, the Secretary-General and the United Nations High Commissioner for Human Rights (E/C.12/ISR/CO/4, sec. 9).

International humanitarian law, alongside international human rights law and international criminal law, therefore, applies in full force in the Occupied Palestinian Territory. It is well-settled that international humanitarian law requires the protection of humanitarian assistance without discrimination and according to the principles of humanity, neutrality, and impartiality (see A/75/337, paras. 15-17). Among other relevant provisions, Article 23 of the Fourth Geneva Convention requires States to "allow the free passage of all consignments of medical and hospital stores" intended only for civilians and "the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and

maternity cases” and Article 70(2) of Additional Protocol I<sup>10</sup> covers the “rapid and unimpeded passage of all relief consignments, equipment and personnel.” State practice also establishes such unimpeded access to humanitarian relief as customary law norms (see ICRC, Customary International Humanitarian Law, Rule 55). International humanitarian law also reaffirms the protection of civilian rights in the Occupied Palestinian Territory, including entitlement “in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs” (GCIV, art. 27).

### *Counter-Terrorism Law Obligations*

The CT Law stipulates that counter-terrorism measures must be implemented “all while taking into account . . . the State of Israel's commitment to combatting terrorism in the spirit of the international conventions to which it is party – balanced alongside the State of Israel's commitment to human rights and the accepted standards in this field as provided by international law.” In this regard, we emphasize that any counter-terrorism measures enacted pursuant to the sectoral counter-terrorism treaties, such as the International Convention for the Suppression of the Financing of Terrorism (the “Terrorist Financing Convention”), to which Israel is a party, must indeed be performed in accordance with other existing international law obligations, including under international human rights law and international humanitarian law. As Article 21 of the Terrorist Financing Convention stipulates, “[n]othing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.”

The same applies to any counter-terrorism measures enacted in accordance with UN Security Council, Human Rights Council, or General Assembly counter-terrorism resolutions. We respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All of these resolutions require that States ensure that any measures taken to combat terrorism or violent extremism, including the criminalization of incitement of and support for terrorist acts, must comply with all existing obligations under international law.

In parallel, the Financial Action Task Force (“FATF”) has set forth non-binding recommendations aimed at preventing global money laundering and terrorist financing. Recommendation 8 and its interpretative note provide guidance to States on the laws and regulations that should be adopted to oversee and protect the subset of non-profit organizations (“NPOs”) identified as being vulnerable to terrorist financing concerns. Crucially, such measures must be “focused and proportionate;” as a “a ‘one size fits all’ approach to address all NPOs is not appropriate.” Implementation “in a manner which respects countries’ obligations under the Charter of the United Nations and international human rights law” is required.

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<sup>10</sup> Notwithstanding your Excellency Government's reservation to the Terrorist Financing Convention that the reference to “international humanitarian law” “does not include the provisions of the Protocols Additional to the Geneva Convention of 1977 to which the State of Israel is not a party,” it is our position that such activities are firmly protected as a matter of customary international law.

## **Human Rights Implications**

### *Definitional Framework*

We respectfully remind your Excellency's Government that States should ensure that counter-terrorism legislation complies with the international law requirements of legality, necessity, proportionality, and non-discrimination. In particular, as the Human Rights Committee has explained, "[a]ll legislation, regulations and military orders [must] comply with the requirements of the principle of legality with regard to accessibility, equality, precision and non-retroactivity" (CCPR/C/ISR/CO/3, sec. 13(b)). In this regard, we echo the Special Rapporteur on the promotion and protection of human rights while countering terrorism's observation that, notwithstanding Security Council resolution 1566 (2004), General Assembly resolution 46/90 and the 1999 International Convention for the Suppression of the Financing of Terrorism, the international legal definition of terrorism remains insufficiently precise, creating ongoing practices of arbitrariness by States and enabling domestic legal lacunae (A/73/361). We reaffirm the definition of "terrorism" adopted in Security Council Resolution 1566, as well as the model definition advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, as set out in best practice 7 in report A/HRC/16/51. In particular, we note that the three-pronged set of elements for the regulation of terrorism acts and its cumulative approach more broadly function as important safeguards to ensure that only conduct of a terrorist nature is criminalized.

We acknowledge that Your Excellency's Government has incorporated certain safeguards in the definition of "terrorist act" under the CT Law. For instance, while the CT Law criminalizes acts which carry out "serious harm to property"—a category of offense that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has identified concerns about (see A/HRC/40/52, para. 41)—the provision further qualifies that there must have also been "an actual possibility that it would cause the serious harm [to a person's body or freedom or to public health or safety] and that [it] was carried out with the intention of causing such harm."

However, we are deeply concerned that certain components of the CT Law's definition of "terrorist act" diverge significantly from the internationally recognized scope of offenses. We echo in this regard the concerns expressed by the Human Rights Committee that the CT Law "contains vague and overbroad definitions of "terrorist organization" and "terrorist act" and may be used to oppress and criminalize legitimate political or humanitarian acts, as illustrated by the designation, in October 2021, of six Palestinian civil society organizations as "terrorist organizations" based on secret information" (CCPR/C/ISR/CO/5, para. 18). Among others, the definition of "terrorist act" encompasses an act or threatened act that poses a risk of "serious harm to religious objects" or "serious harm to infrastructure, systems or essential services, or their severe disruption, or serious harm to the State's economy or the environment." We take the view that these elements are vague and potentially overbroad. We are concerned about the lack of any nexus to the intent to cause serious bodily harm, the mental element that typically distinguishes terrorist acts from other criminal acts. We are also uncertain about the precise scope of the requisite "harm" or "disruption" stipulated. Lacking further specificity and clarity as required under the principle of legality, we underscore that this provision is vulnerable to arbitrary and discriminatory enforcement. In this context, we caution against making "terrorist acts"

a catch-all category of offenses that results in criminalizing activities beyond recognized genuine terrorist conduct.

In addition, the stipulation that a “terrorist act” must be an act that was “carried out with a political, religious, nationalistic or ideological motive” introduces undefined elements that are nebulous, overbroad, and vulnerable to misapplication. In the context of belligerent and transformative occupation these concerns are especially heightened. Among other concerns, we worry that this provision will be easily manipulated based on the enforcer’s own ideological views, in violation of the international law principle of non-discrimination and the fundamental rights to freedom of expression and opinion including artistic and academic freedom. We warn against politically or ideologically motivated prosecution of individuals—especially human rights defenders—for their legitimate exercise of protecting and promoting human rights and fundamental rights.

We note with profound concern that certain individuals and entities may be discriminatorily targeted pursuant to the CT Law and Military Orders. Indeed, we underline the recent determination of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 that:

The political system of entrenched rule in the occupied Palestinian territory which endows one racial-national-ethnic group with substantial rights, benefits and privileges while intentionally subjecting another group to live behind walls, checkpoints and under a permanent military rule “*sans droits, sans égalité, sans dignité et sans liberté*” satisfies the prevailing evidentiary standard for the existence of apartheid (A/HRC/49/87, para. 55).

We further note that the Committee on the Elimination of Racial Discrimination has previously found that Your Excellency’s Government maintains “several laws that discriminate against Arab citizens of Israel and Palestinians in the Occupied Palestinian Territory, and that create differences among them, as regards their civil status, legal protection, access to social and economic benefits, or right to land and property” (CERD/C/ISR/CO/17-19, para. 15). Accordingly, we are concerned that the Counter-Terrorism Law and will similarly be implemented and targeted with broad discriminatory motives, including against the Palestinian Arab minority within Israel or others who demonstrate active support to claims of national self-determination, articulate strongly voiced opposition to the occupation and its material effects on the lives of the Palestinian population, or cooperate with international entities including but not limited to the International Criminal Court and the Human Rights Council.

We reiterate the position and directives stemming from the Office of the Secretary-General, which recognizes that although certain modalities and trends of terrorist violence can be observed in recent years, the “international community needs to recommit to tackling terrorism in all its forms and manifestations, irrespective of its motivations” (A/74/677, para. 11). We underline that international human rights law already provides a robust framework and guidance for regulating against racial discrimination and incitement to discrimination or violence, including the Convention on the Elimination of All Forms of Racial Discrimination and the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence when criminalizing

(A/HRC/22/17/Add.4, annex, appendix, para. 29). We echo the Committee on the Elimination of Racial Discrimination’s concern that Your Excellency has taken the position that “the Convention [on the Elimination of All Forms of Racial Discrimination] does not apply to all the territories under the State party’s effective control”—a position that “is not in accordance with the letter and spirit of the Convention and international law, as also affirmed by the International Court of Justice” (CERD/C/ISR/CO/17-19, para. 9).

We are equally concerned by the overbroad nature of the CT Law’s definition of “terrorist organization.” Section 2 of the CT Law includes in this category any organization that acts “with the intention of promoting the activity of such an organization . . . in a manner capable of making a substantial or ongoing contribution to the organization’s activity, or [where such body of persons] has a substantial affiliation to [the designated organization].” The sweeping and undefined nature of such “substantial or ongoing contribution” or “substantial affiliation”—particularly given the broader situation of Your Excellency’s Government’s belligerent occupation of the Occupied Palestinian Territory—raises serious concerns regarding the legality of the requirements under international law, as well as the necessity and proportionality of the scope of the criminalized conduct vis-à-vis the actual threat of terrorism.

We are particularly concerned that the CT Law makes no exception for the legal and legitimate activities of NPOs. Section 2 of the CT Law stipulates that it is “immaterial whether . . . the organization also engages in legal activities or whether it also acts to further legal objects” (sec. 2) and encompasses in its prohibition a sweeping array of activities categorized as the “identification with” designated organizations. As discussed further in the next section, such overbroad language has serious ramifications for the promotion and protection of the rights to freedom of association and expression under international human rights law, as well as the ability to implement humanitarian activities protected under international humanitarian law. We reaffirm here the finding of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism that overly broad definitions of terrorism threats risk closing and stigmatizing civic space in contravention of international law obligations (A/HRC/40/52, paras. 60, 61, 65) and that associative conduct criminalized must be limited to activities with a genuine link to the operation of terrorist groups and acts (A/70/371, paras. 31–44). There must be a clear difference between criminalizing recognized terrorist conduct to criminalizing legitimate, protected conduct absent any meaningful connection to acts of serious violence against the general population.

We also observe that once an organization meets the enumerated “terrorist organization” definition, it may be designated as such if it “has a connection to Israel” (sec. 3(a)). We are concerned that the requisite “connection” to Israel is undefined and may leave room for the undue discretion and arbitrary enforcement by authorities, implicating extraterritorial activities traditionally beyond their jurisdiction or control. We note with concern that the specific combination of the elements of “ideological motive” and the “connection to Israel” makes organizations vulnerable to discriminatory enforcement based on their political or ideological views—including views that may be critical of the State of Israel, but which squarely fall under protected speech or art under international law. We underline how, as identified by the Special Rapporteur on the promotion and protection of human rights (A/75/337, para. 26), unique concerns may be triggered where there is an attempted regulatory shift

from international humanitarian law to terrorism laws and we emphasize in the context of the Occupied Palestinian Territory the continued obligation to protect the right to self-determination, as enshrined in the UN Charter and common Article 1 of the ICCPR and ICESCR, and reaffirmed in General Assembly resolution 2625 and the International Court of Justice’s advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.

Lastly, we observe with concern the sweeping definitional breadth of a “hostile association” under Military Order No. 1651—and the functionally equivalent “unlawful association” under Emergency (Defense) Regulation 84. We are particularly concerned that the sweeping criminalization of “hostile associations” “whose aim it is to harm public security, IDF forces or the public order in Israel or in a held region” may not be sufficiently specific and narrowly tailored to the permissible aim of protecting national security, and may be vulnerable to misuse as discussed further below. Moreover, the definition of “unlawful association” under the Defense (Emergency) Regulations encompasses a sweeping range of activities, including an organization that “advocates, incites or encourages” not only “acts of terrorism” but among other alternative acts, “the bringing into hatred or contempt of, or the exciting of disaffection against” the Government of Palestine or “the destruction of or injury to property” of the Government. Given the distinctive elements and underlying object and purpose of each category of organizations, we caution against the potential conflation or false equivalency between these and “terrorist organization” designations.

*Rights to Freedom of Association, Freedom of Expression and to participate in cultural life, including artistic and scientific freedoms*

We are troubled that implementation of the CT Law and Military Orders may impinge impermissibly on the rights to freedom of opinion, expression as well as of peaceful assembly and of association as protected under international human rights law, including the Universal Declaration of Human Rights and ICCPR. The sweeping nature of prohibited conduct fails to provide any safeguards or exceptions for the legitimate activities of NPOs and therefore appears to directly contravene the international law requirements of proportionality and necessity. We echo here the Special Rapporteur on the rights to freedom of peaceful assembly and of association’s position that “[i]n order to meet the proportionality and necessity test, restrictive measures must be the least intrusive means to achieve the desired objective and be limited to the associations falling within the clearly identified aspects characterizing terrorism only” (A/HRC/23/39, para. 23). We also refer to the FATF interpretative note to Recommendation 8 stipulating that “measures adopted by countries to protect the NPOs from terrorist financing abuse should not disrupt or discourage legitimate charitable activities.” We underline not only the unlawful character of overbroad and over-restrictive counter-terrorism measures, but also their ineffectiveness given the importance of a free civic space and enabling NPO environment for any effective counter-terrorism effort. As the Special Rapporteur on the promotion and protection of human rights while countering terrorism has determined, “[t]he cost of stifling civil society to prevent any perceived threat of terrorism far outweighs its benefits” (A/HRC/40/52, para. 14). We also recall that arrest and detention for the peaceful exercise of rights protected by the ICCPR may be arbitrary.<sup>11</sup>

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<sup>11</sup> See CCPR/C/GC/35, para. 17 as well as the jurisprudence of the Working Group on Arbitrary Detention.

We are especially concerned about the potential discriminatory targeting of human rights defenders and civil society actors based on their political or ideological views. We note in this regard the UN High Commissioner of Human Rights' statement in the context of Israel that "[t]he banning of organizations must not be used to suppress or deny the right to freedom of association, or to quash political dissent, silence unpopular views or limit the peaceful activities of civil society."<sup>12</sup> We observe that it is well-settled that the right to freedom of expression "includes political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse" (CCPR/C/GC/34, para. 11). It includes speech that offends, shocks and disturbs so long as it does not amount to incitement, which requires the intent and/or threat of actual commission of violence (id.). In the counter-terrorism context, the Human Rights Committee has emphasized that "[s]uch offences as 'encouragement of terrorism' and 'extremist activity' as well as offences of 'praising', 'glorifying', or 'justifying' terrorism, should be clearly defined to ensure that they do not lead to an unnecessary or disproportionate interference with freedom of expression" (id, para. 46). We also recall that deprivation of liberty on the grounds of discrimination may be arbitrary.

We are concerned about the potential squashing or disproportionate restriction of the right of everyone to have access to and participate in cultural life, including artistic freedom, particularly targeting art that is satirical, political and/or provocative. The vague points of the legislation as well as the criminal nature of the offences may have considerable adverse impact on the freedom to maintain and develop cultural expressions and practices for fear of falling within the grey areas of the legislation. It can particularly affect cultural expressions of minorities and marginalized sections of the population. We are also concerned of the impact of such legislation on scientific freedom, that includes social sciences research and methodologies that criticize, doubt and may contravene state's policies and narratives.

We caution that the CT Law and Military Orders may be weaponized against human rights defenders, government critics, and other representatives of civil society of whom the peaceful, non-violent activities must be protected under human rights law. In particular, we fear that the broad criminalization of praise, advocacy, and encouragement, among other activities, is insufficiently tailored to the recognized threshold of incitement and impinges on protected speech and expression in violation of the rights to freedom of expression and opinion, artistic and scientific freedoms, as well as the rights to freedom of peaceful assembly and association. The authority of the District Commander of the Israel Police to issue prevention of activity orders that suspect a "meeting, procession, convention, assembly or training" (CT Law, sec. 69) similarly risks such unlawful impingement. We also note the determination by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 that "Palestinians not only have no voice or vote to hold accountable the military regime which governs much of their lives, they are also severely restricted through Israeli military orders in the exercise of their inherent rights to freedom of expression, assembly, association and movement within their own society" (A/HRC/49/87, para. 53).

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<sup>12</sup> "Israel's 'terrorism' designation an unjustified attack on Palestinian civil society – Bachelet" (26 Oct. 2021), available at <https://www.ohchr.org/en/2021/10/israels-terrorism-designation-unjustified-attack-palestinian-civil-society-bachelet>.



We emphasize that in addition to the rights to speech and association protected under the ICCPR, article 15 of the ICESCR protects the right to “take part in cultural life,” and thus protects participation—alone or in association with others—in cultural awareness and education activities. As the Committee on Economic, Social and Cultural Rights has explained, this encompasses the “right to seek and develop cultural knowledge and expressions,” “to know and understand his or her own culture and that of others through education and information,” and to “share them with others” (E/C.12/GC/21, para. 15).

We are fearful that the designation process and stipulated penalties will have a significant chilling effect on civic space, unlawfully suppressing the legitimate exercise of rights not just of the designated organizations and their members, but in turn, any organization or individual that may fear being construed as associating with such organizations, whether as supporters, donors, or even downstream suppliers. We underline the calls by the Human Rights Council “to revoke any unsubstantiated designations of Palestinian human rights and humanitarian organizations as terrorist or unlawful organizations, and refrain from using anti-terrorism legislation to undermine civil society and its valuable work and contributions to the pursuit of accountability” (A/HRC/49/L.26, para. 22). We also echo the warning of the Special Rapporteur on the promotion and protection of human rights while countering terrorism that “[q]ualifying a wide range of acts as impermissible ‘support for terrorism’ ... results in harassment, arrest and prosecution of humanitarian, human rights and other civil society actors” (A/HRC/40/52, para. 44). Under the CT Law, because a temporary designation can have immediate and full effect, it runs the risk of effectively shuttering human rights NPOs in a short period of time from the outset. In practice, the authority to seize organizational assets may play a particularly outsized and damaging role due to the limited resources on which many NPOs, especially smaller, community-based and women-based organizations, operate. Such action in a situation of occupation also directly undermines State commitments and obligations under the UN Women, Peace and Security Agenda (UNSCR 1325) which have been recognized by the Israeli courts as creating legal obligations under domestic law. In the recent review, CEDAW Committee was concerned that Israeli security forces continued to use disproportionate force in response to acts of violence and protest demonstrations and in law enforcement operations in the context of counter-terrorism measures, with a disproportionately adverse impact on women and girls (CEDAW/C/ISR/CO/6, para. 18). We caution that even temporary designation may preclude NPOs from performing their core activities or from continuing to operate in the first place, thusly directly and adversely impacting the individuals, groups and communities they serve. Indeed, the sheer burden placed on organizations to submit written claims challenging the designation risks undue diversion of organizational resources.

We further underscore that such designations should not be used to undermine the customary and treaty protections globally accepted to apply to the diplomatic corps or the regular activities of governments supporting Palestinian governance, civil society, and economic development through their diplomatic presence and activities, as protected by, *inter alia*, the Vienna Convention on Diplomatic Relations. The CT Law should not be used to prevent diplomats and their local staff from carrying out their regular work without hindrance.

The potential infringement on the rights to freedom of association and freedom of expression and opinion may also pose serious downstream effects, including with

regard to fundamental social and economic rights, such as the right to work protected under article 6 of the ICCPR. We respectfully call your Excellency's Government's attention to the Committee on Economic, Social, and Cultural Rights' statement in General Comment 18 that "[t]he right to work, as guaranteed in the ICESCR, affirms the obligation of States parties to assure individuals the right to freely chosen or accepted work, including the right not to be deprived of work unfairly" (E/C.12/GC/18, para. 4). The designations may have significant reputational harms for individuals and entities—and their families, including women and children—well after a revocation, precluding them from their ability to work or access banking. Construing and criminalizing support to terrorist organizations in an overbroad manner may also result in effectively criminalizing family and other personal relationships.

In addition to the foregoing human rights implications, we express concern that the CT Law and Military Orders risk unlawful impingement on protected humanitarian activities. As explained above, it is our joint position that international humanitarian law applies concurrently with international human rights law in the Occupied Palestinian Territory,<sup>13</sup> and that Your Excellency Government's is therefore additionally obligated under international law to, among others, protect humanitarian activities in the region and to protect the human rights of civilians "in all circumstances" (Geneva Convention IV, art. 27). We reaffirm here the findings of the Special Rapporteur on the promotion and protection of human rights while countering terrorism that designations and asset freezes raise significant humanitarian challenges, both at the structural level, in terms of continuing delivery of vital humanitarian activities and aid, and at the individual and family level, given the potential adverse impacts on designated individuals, their families, NPOs, and women especially (see A/75/337). We also recall in this context the position of the General Assembly that counter-terrorism measures should not impede humanitarian activities and engagement (see, e.g., A/72/284, para. 79). Under international humanitarian law—as well as international human rights law, including pursuant to the ICESCR—support related to ensuring that a person enjoys "minimum essential levels" of economic and social rights, including the rights to food, health and housing, should be protected through express exemptions and should not be criminalized.

#### *Fair Trial and Due Process Rights*

We respectfully remind Your Excellency's Government of your international law obligations to uphold fair trial rights and due process safeguards. Under international human rights law, including pursuant to treaty law, customary law, and general principles of law, the minimum guarantees protected include the presumption of innocence, the right to equality before the law, including to "be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him" without undue delay before trial, the right to a "fair and public hearing by a competent, independent and impartial tribunal established by law," and the right to judicial review and an appeal (ICCPR, art. 14). In this regard, we recall that imprisonment following a trial failing considerably short of fair trial requirements can amount to arbitrary detention.

We are profoundly concerned about the seeming lack of due process safeguards in the designation and revocation procedures stipulated in the CT Law,

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<sup>13</sup> See also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, paras. 101, 114.

particularly with regard to notice and appeals. Starting with the challenge of adequate notice, we note that the CT Law only provides for notice prior to the submission of a designation request in circumstances where the designated organization “is acting in Israel through a party operating on its behalf”—and even then, only so long as “such a warning will not thwart the possibility of taking action against the organization,” thus leaving significant discretion in the hands of the same designating powers (sec. 3(c)). Otherwise, notice of a designation order is published on the Ministry of Defense’s website after the issuance of the designation order (sec. 18). Providing notice after the fact of a designation order raises serious due process concerns and risks unlawful impingement of the right to the presumption of innocence. Even temporary designation orders may enter effect immediately and as discussed above, such designations come with significant costs, reputational, financial, and otherwise, and should not be doled out lightly without sufficient procedural safeguards. While the CT Law stipulates that the “Minister of Defense, in consultation with the Minister of Justice, may determine additional ways . . . to bring the designation or revocation, as the case may be, to the attention” of the designated parties, such measures are merely discretionary and insufficient. These provisions come at the high risk of leaving organizations or individuals wholly unaware of the measures taken against them, and in turn, their legal representatives unable to contest the designation. This reality, combined with the time limits for challenging a temporary designation, are cause for serious concern with significant consequences well beyond the administrative designation process, including for subsequent criminal proceedings.

Although we observe that designated individuals or members of designated organizations have the opportunity to challenge either a temporary or permanent designation after the fact through the submission of written arguments, we take the view that the procedures for such appeals lack adequate safeguards for ensuring sufficiently transparent, independent, and impartial review as required under international human rights law. We underline that any exceptional legal powers invoked in the counter-terrorism context must still be subject to human rights-compliant review. While we acknowledge that the Advisory Committee comprises esteemed jurists and experts (sec. 14), we are concerned that ultimately the CT Law stipulates that it is the Minister of Defense—the same person who requests the designation in the first place—that makes the final decision on a permanent designation, albeit upon review of the Advisory Committee’s recommendations (sec. 6) and subject to challenge before the Supreme Court. Similarly, the CT Law grants District Commanders in the Israel Police with the power to decide on an appeal to a prevention of activity order that he himself issued (sec. 69). In addition, the CT Law stipulates the exclusivity of the revocation proceedings, thus limiting the availability of further judicial review, notwithstanding the generally broad access to the Supreme Court in other types of proceedings (sec. 19). These provisions combined thus risk contravention of the fundamental principles of impartiality and independence as required under international law.

We also observe the unique challenges to transparency posed by secret evidence throughout the designation and revocation proceedings under the CT Law. The CT Law permits the Advisory Committee to make determinations of confidentiality—including upon review of information on the matter from the Head of the Defense (Security) Authority, “even without the presence of the applicant or its attorney”—and to make a permanent designation recommendation based on such confidential information (sec. 9). Where the Advisory Committee relies on confidential information in its decision-making, it is required to “send the party or its

attorney a summary of the confidential information prepared by the Head of the Defense (Security) Authority who requested that the information be confidential,” but only “insofar as it is possible to do so without harming the interest for which confidentiality was determined” (sec. 9(c)). Following the admission of such secret evidence in the designation proceedings, the same confidential information may be used in subsequent administrative or criminal proceedings against the designated party. In addition, the CT Law explicitly stipulates more permissive evidentiary rules in legal proceedings challenging administrative orders for the seizure of assets (sec. 65).

We are deeply concerned that these evidentiary procedures—particularly the significant amount of discretion and exceptionality stipulated—fail to meet minimum due process guarantees, including the equality of arms. We echo the Human Rights Committee’s “concern[s] about the use of secret evidence in counter-terrorism proceedings, which is inaccessible to defendants and their lawyers, thereby violating their right to fair trial” (CCPR/C/ISR/CO/5, para. 18). As stipulated under the CT Law, due to the discretion granted to the Advisory Committee to withhold even a summary of the confidential information, the designated party and their attorney may be left without any understanding of the basis for their designation and as a result, unable to adequately defend themselves and challenge the designation or subsequent penalties. We emphasize in this context the importance under international human rights law of accused persons having the opportunity to access and refute evidence—whether in administrative, civil, or criminal proceedings. We reaffirm the Human Rights Committee’s guidance that “[e]xcessive restrictions on access to information must [] be avoided” (CCPR/C/GC/34, para. 46). The human rights compliant use of intelligence material in administrative proceedings is vital to ensuring the effectiveness of fair trial rights. We warn that un-corroborated intelligence evidence—or summaries therein—absent judicial oversight and other procedural safeguards, may render the requisite assessments of proportionality and necessity meaningless and therefore be insufficient for the authorization of rights-limiting counter-terrorism measures. In addition, where summaries of underlying evidence are provided, we warn that they may be too narrow and condensed to give parties and their legal representatives sufficient information to contest the factual bases for the designation and advance contradictory proof.

We further express concern that the procedures stipulated in the CT Law diverge from the protections against arbitrary arrest or detention protected under international human rights law, including pursuant to article 9 of the ICCPR. Chapter Four of the CT Law stipulates certain exceptions to Israel’s Arrests Law for grave security offense detainees, including the extension of detention before being brought before a judge and prior to indictment, as well as in exceptional cases, hearings in the detainee’s absence (secs. 46–49). We note that the exceptional nature of the procedures stipulated risk discriminatory, arbitrary enforcement. We especially emphasize the importance of protecting against undue delay in pre-trial detention practices and bolstering transparency throughout the proceedings. We express concern that the High Commissioner for Human Rights has previously found that Your Excellency’s Government has used administrative or extended pre-trial detention as a tool to target Palestinian individuals and human rights defenders and “to pressure them to accept convictions based on plea bargains” (A/HRC/46/63, para. 52), and we underline the need for independent judicial processes beyond administrative and military commission proceedings. In addition, we wish to remind your Excellency’s Government that in accordance with article 9(4) of the ICCPR, anyone detained has

the right to challenge the legality of his or her detention before a court. This right, which is a customary law under international law, applies to all situations of deprivation of liberty, including not only to detention for purposes of criminal proceedings but also to situations of detention under administrative and other fields of law (UDHR, CCPR/C/GC/35).

In the context of both designation and revocation proceedings, we reiterate the importance of ensuring full and meaningful legal representation for designated individuals or entities throughout. We note with concern the systemic accountability challenges that the High Commissioner for Human Rights has identified in this context, including the finding in 2017 that Your Excellency's Government failed to implement 91 percent of the recommendations on the arrest and detention of Palestinians and 90 percent of the recommendations on accountability and access to justice (A/HRC/35/19, para. 81) and the more recent finding that "[t]he arrests of Palestinians almost doubled in 2021, with administrative detention – without charge or trial – up 30 percent."<sup>14</sup> We also underscore in this context the worrying determination by the High Commissioner that from 1 November 2020 to 31 October 2021, your Excellency's Government "carried out arbitrary arrests and criminal prosecution of human rights defenders, including women human rights defenders, movement restrictions, searches and closures of CSOs, dispersal of peaceful assemblies, attacks against journalists and restrictions of online civic space" (A/HRC/49/83, para. 29). We would also like to refer to General Assembly resolution 68/181, adopted on 18 December 2013, on the protection of women human rights defenders. Specifically, we would like to refer to articles 7, 9 and 10, whereby States are called upon to, respectively, publicly acknowledge the important role played by women human rights defenders, take practical steps to prevent threats, harassment and violence against them and to combat impunity for such violations and abuses, and ensure that all legal provisions, administrative measures and policies affecting women human rights defenders are compatible with relevant provisions of international human rights law.

As stressed by the Working Group on discrimination against women and girls in one of its reports to the Human Rights Council (A/HRC/23/50), stigmatization, harassment and outright attacks are used to silence and discredit women who are outspoken as leaders, community workers, human rights defenders and politicians. Women defenders are often the target of gender-specific violence, such as verbal abuse based on their sex, sexual abuse or rape; they may experience intimidation, attacks, death threats and even murder. Violence against women defenders is sometimes condoned or perpetrated by State actors. The Working Group recommended that States accelerate efforts to eliminate all forms of violence against women, including through a comprehensive legal framework to combat impunity, in order to fulfill women's human rights and to improve the enabling conditions for women's participation in political and public life.

In addition, we observe that the potential existence of parallel proceedings—challenging "terrorism organization" designations under the CT Law on the one hand and "hostile organization" designations under Military Order No. 1651—introduces further complicating factors for adequate representation and defense and opens the door to potential double jeopardy. This complex, regulatory

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<sup>14</sup> Statement by the High Commissioner for Human Rights, 49<sup>th</sup> session of the Human Rights Council, Item 2, available at <https://www.un.org/unispal/document/statement-by-the-high-commissioner-for-human-rights-on-the-activities-of-her-office-and-recent-human-rights-developments/>.

landscape must be considered in its entirety when considering whether the designated individuals or entities have been granted the requisite due process and fair trial guarantees under international law.

Finally, we note that physical and digital surveillance and search powers, absent sufficient procedural safeguards, risk unlawfully impinging the right to freedom of peaceful assembly and association, the rights to privacy and property, and procedural fairness rights as protected under international human rights law. In this regard, we echo the findings of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, that “national laws must. . . [e]nsure that a surveillance operation be approved for use against a specific person only in accordance with international human rights law and when authorized by a competent, independent and impartial judicial body, with all appropriate limitations on time, manner, place and scope of the surveillance.” (A/HRC/41/35, para. 50(c)). We also reiterate the observation made in a prior communication to Your Excellency’s Government that “privacy functions as a gateway right to the protection of a host of other fundamental rights including non-derogable rights and violating it amounts to violate numerous other rights” (AL ISR 11/2021).

#### *Sanctions and Penalties*

We understand that the CT Law and Military Orders provide for a wide range of sanctions and penalties for designated individuals or organizations. Among other sentences stipulated upon conviction, the CT Law provides for 2 to 5 years for identification with a designated terrorist organization or incitement to terrorism, to 5 to 25 years for members and directors of a designated organization and life imprisonment where the terrorist organization commits offenses of murder (secs. 20–24). Military Order No. 1651 stipulates 10 years imprisonment for contact with or incitement and support of a hostile organization.

We underline the importance of ensuring human rights and international law compliance when establishing sentencing terms, and especially when adopting prison sentences that deviate from those provided under domestic criminal law. We are particularly concerned by the severity of the sentencing proposed under the CT Law given the potential prosecution of conduct protected under international human rights law, absent any intent to further terrorist activities. We emphasize in this regard the importance of ensuring that prison sentences are proportionate to the alleged offense, decided upon in accordance with fundamental human rights principles, and protected against arbitrary, discriminatory enforcement.

We also underline that as with criminal proceedings, administrative penalties, such as asset seizure orders, must be enacted in accordance with the international law requirements of legality, proportionality, necessity, and non-discrimination, as well as in accordance with due process and procedural rights. We are especially concerned about the downstream consequences of asset seizures for the families of designated individuals, including children, whose economic and social rights may be dramatically affected. We emphasize the vital role that independent oversight mechanisms and judicial review processes play in minimizing arbitrariness and abuse in the implementation of such penalties.

As it is our responsibility under the mandates that the Human Rights Council has provided to us to seek to clarify all cases brought to our attention, we would be

grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned assessment of the CT Law, Defense (Emergency) Regulations, and Military Orders.
2. Please provide information on how the definitions of “terrorist act” and “terrorist organization” are compatible with the principles of legality, proportionality, and non-discrimination established under international law, including pursuant to the ICCPR.
3. Please explain how the “terrorist organization,” “hostile association,” and “unlawful association” designation and revocation proceedings are compatible with Your Excellency’s Government’s obligations under international human rights law and international humanitarian law, particularly with respect to the promotion and protection of the fundamental rights to freedom of association and freedom of expression, property, work, privacy, and the right to take part in cultural life.
4. Please explain how the stipulated measures designating “terrorist organizations,” including potential NPO asset seizures, prevention of activity orders, and dissolutions, are implemented in accordance with the FATF Recommendations, including Recommendation 8 on NPOs and its interpretative note, which states that focused counter-terrorism financing measures should “ensure that legitimate charitable activity continues to flourish” and “minimize negative impact on innocent and legitimate beneficiaries of charitable activity.”
5. Please identify the positive measures and oversight provided by your Excellency’s Government to ensure due process and fair trial safeguards in the designation and related proceedings. In particular, explain what avenues for independent, impartial, and transparent judicial review and remediation are available to wrongfully designated individuals or organizations.

This communication, as a comment on legislation, regulations or policies, and any response received from your Excellency’s Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Fionnuala Ní Aoláin  
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Mumba Malila  
Vice-Chair of the Working Group on Arbitrary Detention

Alexandra Xanthaki  
Special Rapporteur in the field of cultural rights

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion  
and expression

Clément Nyaletsossi Voule  
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Fernand de Varennes  
Special Rapporteur on minority issues

Ana Brian Nougrères  
Special Rapporteur on the right to privacy

Francesca Albanese  
Special Rapporteur on the situation of human rights in the Palestinian territory  
occupied since 1967

E. Tendayi Achiume  
Special Rapporteur on contemporary forms of racism, racial discrimination,  
xenophobia and related intolerance

Melissa Upreti  
Chair-Rapporteur of the Working Group on discrimination against women and girls